No. 9242

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

West Coast Life Insurance Company (a corporation), Pacific National Bank of San Francisco (a national banking association), et al.,
Appellants,

vs.

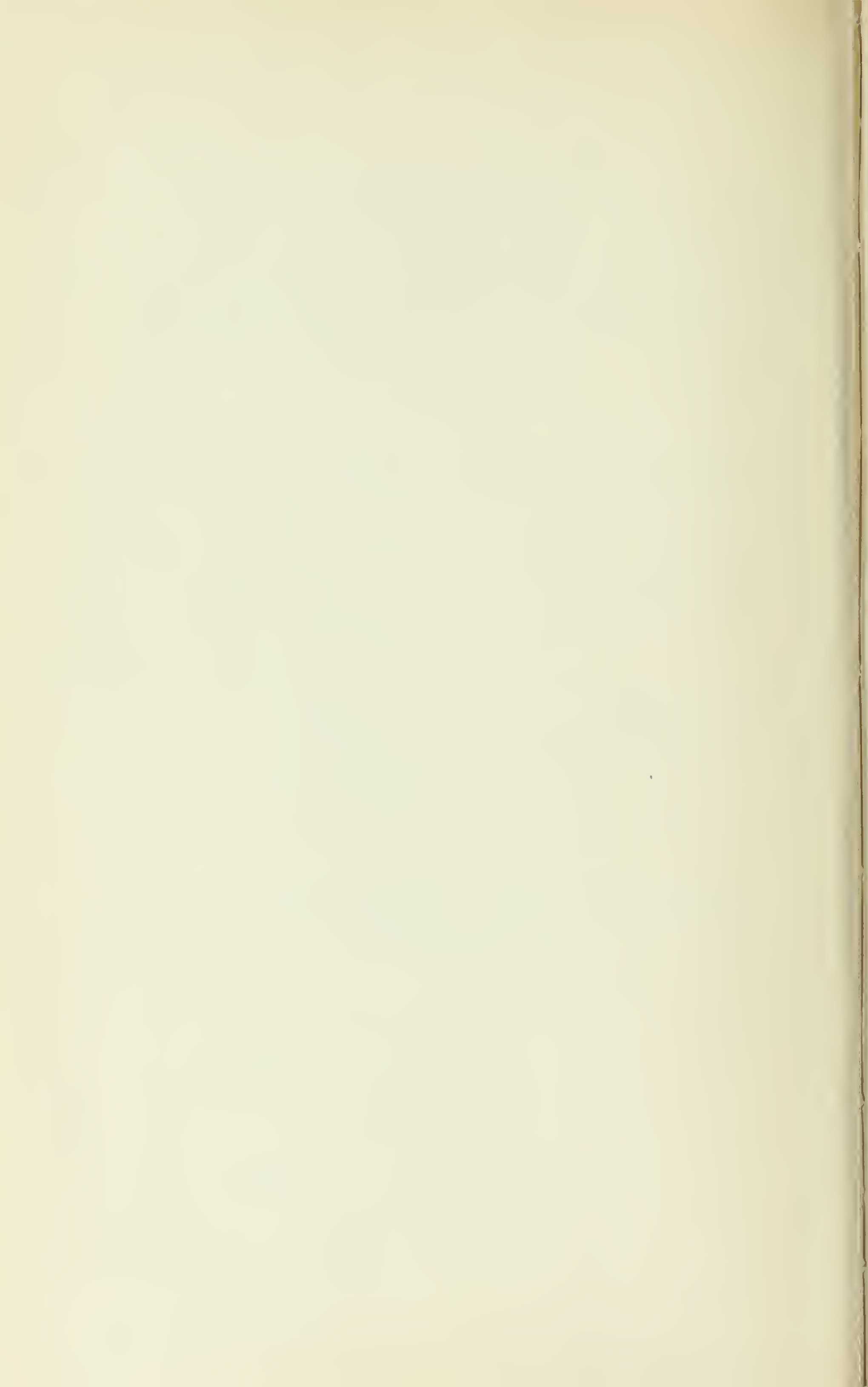
Merced Irrigation District and Reconstruction Finance Corporation,
Appellees.

PETITION OF APPELLANT, MINNIE RIGBY, ET AL., FOR A REHEARING.

Peter tum Suden,
605 Market Street, San Francisco,
Attorney for Appellant and Petitioner, Minnie Rigby, et al.

FILED
OCT 4 - 1940
PAUL P. O'BRIEN,
CLERK

Pernau-Walsh Printing Co., San Francisco



Subject Index

I. Page

Consent of holders of California irrigation district bonds cannot confer jurisdiction on Congress to extend the bankruptcy power to such districts which are exclusively governmental agencies 2

II.

The rental value of lands acquired by the district on tax foreclosure is a perpetual "public trust" for the uses and purposes of the act. Congress cannot through the bankruptcy act empower any court to impair or repudiate such a public trust. This would constitute an utter denial of fairness to appellants' rights.................. 13

Table of Authorities Cited

Cases

Pages

Anderson-Cottonwood Irr. Dist. v. Klukkert, 13 Cal. (2d) 191 12
Ashton v. Cameron County, etc., District (1936), 298 U. S. 513, 56 S. Ct. 892.... 5
A. T. & S. F. Ry. Co. v. Elephant Butte Irr. Dist., 110 F. (2d) 767 14

Baldwin v. Commissioner, B. T. A. Docket No. 86065, Decision June 2, 1939.... 7
Brush v. Commissioner, 300 U. S. 352.... 25

Case v. L. A. Lumber Products (Jan. 1940), 307 U. S. 619, 84 L. ed. 22.... 13
City of Beatrice v. Wright, 101 N. W. 1041.... 16
Cosman v. Chestnut, 238 Pac. 879.... 13
County of Los Angeles v. Jones, 92 Cal. Dec. 120, 6 Cal. (2d) 695 15
County of San Diego v. Hammond, 6 Cal. (2d) 709.... 14

El Camino Irr. Dist. v. El Camino Land Corp. (Nov. 1938), 12 Cal. (2d) 378, 85 Pac. (2d) 123.... 2

Fairhope Single Tax Colony v. Melville, 69 So. 466.... 14
Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112.... 12
Farwell v. San Jacinto Irr. Dist., 49 Cal. App. 167.... 14
Fulton v. Brannan, 88 Cal. 454.... 19

George v. Braddock, 18 Atl. 881.... 14
Glenn-Colusa Irr. Dist. v. Ohrt, 31 Cal. App. (2d) 618.... 12

Happy Valley Water Co. v. Thornton, 34 Pac. (2d) 991.. 17

Louisiana v. Pilsbury (1882), 105 U. S. 278, 26 L. ed. 1090 9

Meador, In re, 1 Abb. (U. S.) 334.... 14
Monk Realty Corp. v. Wise Shoe Stores, Inc. (1940), 111 F. (2d) 287 16
Moody v. Provident Irr. Dist., 12 Cal. (2d) 389.... 11

Norris v. Montezuma, 248 Fed. 369.... 14

Pages

Osborne v. Mobile, 44 Ala. 499.......................... 14

Provident Land Corp. v. Zumwalt (1938), 12 Cal. (2d) 365 ....9, 13, 17, 19, 20

Rialto v. Stowell Irr. Dist., 246 Fed. 294................. 14
Roberts v. Richland Irr. Dist., 289 U. S. 71............... 14

Sinking Fund cases, 99 U. S. 700......................... 4
State v. Aiken, 284 N. W. 63............................. 14
State v. Amana Society, 109 N. W. 894.................... 14

U. S. v. Bekins, 304 U. S. 27, 82 L. ed. 751 (1938)......... 2

Zavelo v. Reeves, 227 U. S. 625.......................... 17

Codes and Statutes

Bankruptcy Act:
Section 80 .... 2, 5
Section 81 .... 5, 6
Sections 81 to 84.................................. 2
Section 83, par. "I"................................ 25

California Irrigation District Act....................... 2, 6
California Constitution, Art. XVII, Section 2............. 19

Texts

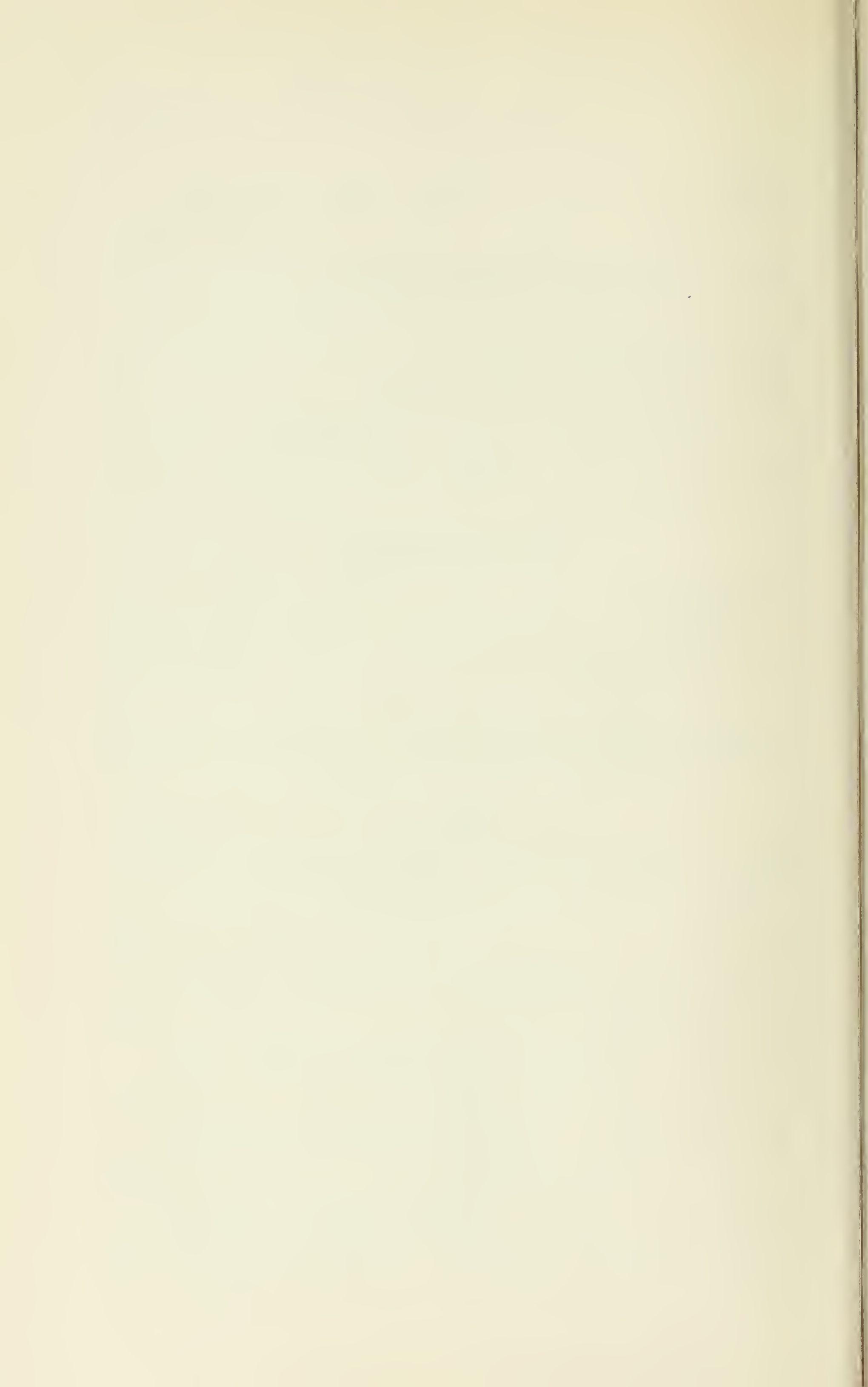
Browne, Robert H., "Abraham Lincoln. The Men of His Time", Vol. II, pp. 89, 90, Blakely-Oswald Printing Co., Chicago 22

California State Planning Board 1938 report, "Tax Delinquent Land in California"............................ 20
65 C. J. 1254, 1265....................................... 3

Governor's Commission on Re-employment Report, September 30, 1939, Chapter VII.......................... 19

Mill, John Stuart, "Principles of Political Economy", Book 5, Chapter III, Section 2......................... 24

Smith, Adam, "Wealth of Nations", Book V, Chap. 2, Part 2, Art. 7.. 23
Spencer, Herbert, "Social Statics" (1851 Ed.), Chapter IX 24



No. 9242

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WEST COAST LIFE INSURANCE COMPANY (a corporation), PACIFIC NATIONAL BANK OF SAN FRANCISCO (a national banking association), et al., *Appellants,* vs. MERCED IRRIGATION DISTRICT and RECONSTRUCTION FINANCE CORPORATION, *Appellees.*	

PETITION OF APPELLANT, MINNIE RIGBY, ET AL., FOR A REHEARING.

To the Honorable Curtis D. Wilbur, Presiding Judge, and to the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Minnie Rigby and Richard tum Suden, as executrix and executor of the estate of William L. Lieber, deceased, respectfully petition this Honorable Court to grant a rehearing in the above entitled action, and in that behalf urge:

I.

CONSENT OF HOLDERS OF CALIFORNIA IRRIGATION DISTRICT BONDS CANNOT CONFER JURISDICTION ON CONGRESS TO EXTEND THE BANKRUPTCY POWER TO SUCH DISTRICTS WHICH ARE EXCLUSIVELY GOVERNMENTAL AGENCIES.

This Court has made a decision which is wholly and patently erroneous because of the Court's failure to perceive the precise nature of a California irrigation district under the California Irrigation District Act, particularly as more clearly defined by the State Courts of last resort in California since the decision of the United States Supreme Court in *U. S. v. Bekins,* 304 U. S. 27, 82 L. ed. 751, in April, 1938, construing Secs. 81 to 84 as added to the Bankruptcy Act by the act of August 16, 1937.

Every irrigation district in this State exists and functions wholly and solely in a governmental capacity "only for governmental purposes" as a "political subdivision" of the State. No irrigation district in this State acts in any proprietary capacity; no district holds or owns any property in a proprietary capacity.

> *El Camino Irr. Dist. v. El Camino Land Corp.* (Nov. 1938) 12 Cal. (2d) 378, 383; 85 Pac. (2d) 123, 125.

In this respect a California irrigation district differs from districts organized under the laws of many other states, and from a municipal corporation, but falls within "political subdivisions" as mentioned in Sec. 80 of the first municipal debt relief act of May 24, 1934.

The sovereignty of the State of California precludes any exercise of the federal bankruptcy power over the State itself or over any political subdivision of the State which has exclusively governmental capacity and exercises exclusively governmental functions, with no proprietary capacity or functions. Without the State's consent any attempt of Congress to exercise such a power would certainly be an interference with the State's power of taxation.

But if Congress is devoid of such power without consent of the sovereign State, the State cannot give its consent, for to do so would be a surrender of one of its sovereign functions, viz., the power of taxation exercisable through one of its governmental agencies. It would be an abnegation of the State's sovereignty.

When the Constitution of this country was set up, was ratified, we created a **unique** system of government, which has never existed anywhere else in the world. We created **two** sovereignties, operating in the same territory. The States were sovereign States, before the ratification of the Constitution. The Supreme Court of the United States has ruled that they achieved their sovereignty on July 4, 1776, and their first attempt at organization was under the Articles of Confederation, in the second article of which each State expressly reserved its sovereignty and declared it was not delegating it to the central government.

65 *C. J.* 1254, 1265.

They did not delegate that sovereignty to the United States, when the Constitution was ratified, and it

was necessary to delegate to the United States a **certain degree** of sovereignty, but they created a government **purely of delegated** powers, and to make it certain that they had not delegated all of their sovereignty to the United States Government the tenth amendment was ratified which expressly declares that all powers not **expressly** delegated to the United States are **reserved** to the States or to the people.

Now, that system of **two sovereignties** operating in the same territory is what brings about the very problem that we are now discussing. When you have two sovereignties operating in the same territory, a certain degree of friction is inevitable, and these doctrines of immunity from taxation or interference of one sovereignty by the other, are simply a series of compromises which were necessary in order to make that mechanism work with as little friction as possible, because if one sovereign could tax the other or **interfere** with its **taxing power** it could legislate **it out of existence.**

> "One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."
>
> Sinking Fund cases, 99 U. S. 700 at 718.

Furthermore, whatever power the Congress has over bankruptcy it has such power without the "consent" of a particular state in a particular proceeding, and irrespective of the state's giving or withholding

"consent" to federal jurisdiction. "Consent" does not confer jurisdiction of any particular proceeding.

In

Ashton v. Cameron County, etc., District (1936) 298 U. S. 513, 56 S. Ct. 892,

the Court said:

> "Neither consent nor submission by the states can enlarge the power of Congress; none can exist except those which are granted."

It should be observed, also, that Sec. 80 of the Bankruptcy Act, added in 1934, the first municipal bankruptcy act, which was held unconstitutional in

Ashton v. Cameron County, etc., Dist. (1936) 298 U. S. 513.

specifically purported to be applicable to "any municipality or other **political** subdivision of any state."

Sec. 81, enacted August 16, 1937, gives courts of bankruptcy original jurisdiction "for the composition of indebtedness of, or authorized by, any taxing agencies or municipalities hereinafter named", to-wit: Certain agricultural improvement districts or local improvement districts organized for agricultural purposes, etc. The avoidance of the term "political subdivision of any state" indicates an intention of Congress to obviate the unconstitutional aspect of the former act and a determination to give the bankruptcy courts no jurisdiction over "political subdivisions" whose functions are solely and exclusively **governmental.**

The significance of this change in terminology is increased by the enactment in the later amendment

of Sec. 81 of a clause to permit a separate operation of the act in respect to certain kinds of districts, etc., e. g., those having proprietary powers and functions, if such application of the amendment would save its constitutionality at least in part.

The proviso at the end of Sec. 81 of the Act, as amended August 16, 1937, is as follows:

> "Provided, however, that if any provision of this chapter, on the application thereof to any **such taxing agency or district or class thereof** or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other **or different taxing agency or or district or class thereof** or to any other or different circumstances, shall not be affected by such holding." (The new matter is indicated by our emphasis.)

The constitutionality of the several Revenue Acts enacted by Congress to raise federal income taxes has been frequently sustained by the Courts; each of these acts empowers Congress to tax income from "whatever source derived." Yet the Courts have never ruled that Congress has the power to tax interest from bonds issued under the California Irrigation District Act, irrespective of whether consent of some bondholders was or was not given, and irrespective of any consent by any state to a levy of a federal income tax on interest on bonds issued by its irrigation districts.

It is interesting to note that when the U. S. Commissioner of Internal Revenue attempted to tax the

salary of the secretary of a California irrigation district, counsel who in the case at bar assert the applicability of the bankruptcy statute to California irrigation districts vigorously opposed the applicability of the revenue act.

In

Baldwin v. Commissioner, B. T. A. Docket No. 86065, Decision June 2, 1939,

the United States Board of Tax Appeals, in upholding the correctness of such objections, held:

> "Counsel for petitioners have filed able and exhaustive briefs to support the contention that an irrigation district in the State of California is a public agency of the State performing essential governmental functions. The findings of fact have been made in some detail, as far as is deemed necessary. Upon the facts and the local law cited, we conclude that the Nevada Irrigation District is a public agency and political subdivision of the State of California, exercising functions defined by statute and authorized by the Constitution of the State of California which are **essentially governmental** as opposed to proprietary. It is well known that irrigation of arid lands is a matter involving the general welfare in California and the Supreme Court of California, upon such consideration of the subject, has concluded that the use of water for irrigation is a public use and that irrigation districts, created under a constitutional irrigation act, are public agencies of the State whose functions are **exclusively** governmental. We have ample authority for concluding as we have done above and refer to decisions by name only, believing it unnecessary to discuss the cases.

Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112; El Camino Irr. Dist. v. El Camino Land Corp., 85 Pac. (2d) 123, 125; Anderson-Cottonwood Irr. Dist. v. Klukkert, 97 Cal. Dec. 348, 352; Moody v. Provident Irr. Dist., 85 Pac. (2d) 128, 130; in the matter of the bonds of Madera Irr. Dist., 92 Cal. 296; 28 Pac. 272, 275. On the limited question of whether Nevada Irrigation District's function of impounding and distributing water for irrigation is an exercise of an **essential governmental function,** the case, Brush v. Comm., 300 U. S. 352, is applicable here * * *." (Emphasis supplied.)

If Chapter IX of the Bankruptcy Act were a taxing act instead of a bankruptcy act, no one would contend that the consent of holders of California Irrigation District bonds to pay a federal income tax on interest would create any power in Congress to exact such revenue. If consent of bondholders would not give Congress any power not already possessed to enact a federal tax law, it must follow that "consent" of the State or of any holders of California Irrigation District bonds would not create the power for Congress to apply any provision of the Bankruptcy Act to this district. Congress either has the power without the consent of the bondholders or the "consent" of bondholders is a futile attempt to confer such power upon Congress.

When the State acting through an Irrigation District issued these bonds, the State irrevocably empowered its agent, the Irrigation District, to contract with the purchasers of the bonds that the State itself would never, directly or indirectly, give a consent

to an impairment of the agency's right and duty to devote to the payment of the bonds the rental value, present and future, or usufruct, of the land within the district.

In

Louisiana v. Pilsbury (1882) 105 U. S. 278, 288; 26 L. ed. 1090,

this principle is stated in the following language:

"The case of *Von Hoffman v. Quincy,* reported in 4th Wallace, 535 (71 U. S. XVIII., 4031), is a leading one on this subject. The Court there said: 'That when a State has authorized a municipal corporation to contract, and to exercise the power of local taxation to the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The State and the corporation, in such cases, are equally bound'."

In

Provident Land Corp. v. Zumwalt, 12 Cal. (2d) 365,

the Court was faced with a situation in principle similar to, if not identical with, that involved in the case before this Court. There, as here, the respondents contended that the Provident Irrigation District was insolvent because its bonds and coupons past due greatly exceeded the ability of the district to pay delinquencies from uncollected assessments. The district itself had acquired practically all of the land within its boundaries. The Court there said:

"But laying aside quibbles as to the exact meaning of the phrase 'uses and purposes', it seems

clear that to function on borrowed money, repayment of the money is not a wholly immaterial and foreign objective. Evading creditors is not a contemplated activity of a public district, whose bonds are recognized investments for financial institutions. Among other purposes of the act, therefore is the repayment of the bondholders of the district, and it follows that this is one of the purposes of which the **trust money is held.**

This view is fortified by a consideration of the general plan of the statute, in so far as it provides for the creation of an obligation and a procedure for payment. The land is the ultimate and only source of payment of the bond. **It can never be permanently released from the obligation** of the bonds until they are paid. The release from liability for assessments while the district holds title is intended to be temporary only, and the liability for new assessments is again imposed when it goes back into private ownership. **Any practice** which removes the land as ultimate security for the bonds, or which places its proceeds beyond the reach of the bondholders, destroys that plan and is contrary to the spirit of the act. And the practice employed by the district herein does exactly that. Theoretically and formally the remedies of the bondholders remain unaltered. Actually they have been destroyed. Economic conditions have placed the land outside of the power of assessment for payment of the bonds. But it is the act of the directors alone which has taken the **proceeds** of the land from the bondholders. This use of the funds, contrary to the whole intent of the act, is in our opinion in violation of the **trust impressed on the land** under Section

29. * * * We assume, for the purposes of this case, that the directors, in their discretion, may determine that some of the proceeds of **leasing** of lands are essential to operation and maintenance, and may use them for these purposes. But any surplus, over and above operating expenses, **remains subject to the trust,** and should go to the payment of the bondholders." (Emphasis ours.)

Also on November 28, 1938, the California Supreme Court said in *Moody v. Provident Irr. Dist.,* 12 Cal. (2d) 389 at 395:

"That the annual assessments and the sale of the lands upon which the assessments are not paid may never realize sufficient money to pay the indebtedness of the district is entirely beside the question. The property of the district, so far as it owns any property, constitutes a **public trust** and is held by the district for a **public use**, and, therefore, is **not subject** to levy and sale upon **execution** by a creditor of the district. (Citing cases.) That the **statute of limitations,** under the circumstances disclosed by this case, could **never** be pleaded by the district until it had the money in its possession to pay the bonds belonging to plaintiff, and had given notice, is supported by the case of Freehill v. Chamberlain, 65 Cal. 603, 4 Pac. 646 * * *." (Emphasis ours.)

To such an extent has this doctrine been carried that all property owned by the district is a "Public Trust" and beyond the reach of any other taxing agency of the State. The property of the district, as the agent of the State, is the property of the State.

Property of the State is exempt from taxation. Therefore, while property within the district, title to which is taken by the district for default in the payment of assessments, is held by the district as trustee for the "uses and purposes of the Act", the land itself and the district's share of crops in a warehouse are exempt from taxation.

> *Anderson-Cottonwood Irr. Dist. v. Klukkert,* 13 Cal. (2d) 191;
>
> *Glenn-Colusa Irr. Dist. v. Ohrt,* 31 Cal. App. (2d) 618.

To now hold that this "Public Trust" as determined in the late decisions, supra, and which is exempt from taxation or execution by any creditor, is subject to destruction by Congress, is to sanction repudiation without precedent, and to reverse the protection guaranteed by the countless tests of this California Statute, beginning with Fallbrook Irr. Dist. v. Bradley, 164 U. S. 112, and which decision has never been acceptable to the private ground rent collectors since Mr. George H. Maxwell argued in that historic case: "It (the Cal. Irr. Dist. Act) is communism and confiscation under the guise of law."

II.

THE RENTAL VALUE OF LANDS ACQUIRED BY THE DISTRICT ON TAX FORECLOSURE IS A PERPETUAL "PUBLIC TRUST" FOR THE USES AND PURPOSES OF THE ACT. CONGRESS CANNOT THROUGH THE BANKRUPTCY ACT EMPOWER ANY COURT TO IMPAIR OR REPUDIATE SUCH A PUBLIC TRUST. THIS WOULD CONSTITUTE AN UTTER DENIAL OF FAIRNESS TO APPELLANTS' RIGHTS.

The rental value of land pledged as security for money borrowed by such a district is equivalent to a first lien on all the property of the district.

To permit any portion of this rental value to accrue to private interests (as it would if bonds of the irrigation districts are scaled down) or to the State itself while lawful indebtedness is past due and unpaid is tantamount to allowing a second mortgage to be paid, while the first mortgage is ordered drastically scaled down. Such a procedure would be a clear violation of law as is shown in

> *Case v. L. A. Lumber Products* (Jan. 1940) 307 U. S. 619, 84 L. ed 22.

California Irrigation District bonds have been uniformly held to constitute general obligations payable from unlimited annual taxes or assessments levied according to the value of the land (exclusive of improvements) and not in any sense according to "ability to pay"; when land is foreclosed by the District for unpaid assessments, the present and future rent of the land takes the place of taxes and assessments against land in private ownership.

> *Provident v. Zumwalt,* 12 Cal. (2d) 365;
> *Cosman v. Chestnut,* 238 Pac. 879;

Rialto v. Stowell Irr. Dist., 246 Fed. 294;
Farwell v. San Jacinto Irr. Dist., 49 Cal. App. 167;
Norris v. Montezuma, 248 Fed. 369;
George v. Braddock, 18 Atl. 881;
State v. Amana Society, 109 N. W. 894;
Fairhope Single Tax Colony v. Melville, 69 So. 466;
State v. Aiken, 284 N. W. 63;
In re Meador, 1 Abb. (U. S.) 334;
Osborne v. Mobile, 44 Ala. 499;
A. T. & S. F. Ry. Co. v. Elephant Butte Irr. Dist., 110 F. (2d) 767.

In

Roberts v. Richland Irr. Dist., 289 U. S. 71,

the United States Supreme Court ruled that the assessment may exceed the benefits. Such bonds must not be confused with ordinary assessment bonds which are secured only by specific and limited assessments that must be collected within a limited number of years or the land becomes subject to sale by the State for unpaid general taxes free and clear of the uncollected special assessments and also free and clear of any further obligation to pay such bonds.

It is not only the right, but the duty of a California county to keep land on its tax paying rolls, and any bond contracts of other taxing agencies that interfere should be assumed or compromised by county.

County of San Diego v. Hammond, 6 Cal. (2d) 709;

County of Los Angeles v. Jones, 92 Cal. Dec. at 120-121, paragraphs 9 and 10; 6 Cal. (2d) 695.

Therefore, the **real question** is not whether Congress exceeded its powers in enacting Sec. 81, but it is whether this act can be applied to such a political subdivision of the State as a California Irrigation District, which the **late** decisions of the California Supreme Court has so defined and determined it to be.

The power of Congress to pass an act affording the relief of bankruptcy to some taxing units, and the applicability of such act to State agencies having only **governmental** functions are two wholly different matters.

Surely, if Congress can enact a law under which these bonds can be repudiated, it must have an equal power to subject them to taxation, under the tax clause. To hold otherwise, would be to accord the bankruptcy clause a higher rank and dignity than the taxing clause, which the Ashton case appears to hold squarely cannot be done.

The Courts in all the 164 years of our National life have never implied that the taxing and borrowing power of the States is, under any clause in the Constitution subject to interference, or regulation through an Act of Congress, and such expressions as have been occasioned on the subject are unmistakably against the existence of such a power. If Congress has such power, with the consent of some bondholders, and one

State, it would unquestionably have the power without such consents. There is here involved a fundamental principle of Constitutional law that far transcends in importance of any debt problems of a State or its political subdivisions, or those of the holders of its securities.

With regard to the requirement that the plan be "fair and equitable" and the allegation on page 2 of brief of Amicus Curiae, Irrigation Districts Association of California, dated October 11, 1938, in No. 9206 in this Court:

> "This problem and its acuteness is not peculiar to California, but unfortunately is one of the major problems facing California today. A failure of solution will result in a **major catastrophe** in the State."

it will be noted that Amicus Curiae does not say, "A failure to get **approval of these petitions** will result in a major catastrophe", nor do they even hint the precise economic interests that would be losers.

> "It is an invitation of the most pronounced kind to covinous transactions, inevitably resulting in the release of property from just burdens of taxation by a sale thereof, in form only."
>
> *City of Beatrice v. Wright,* 101 N. W. 1041.

In

> *Monk Realty Corp. v. Wise Shoe Stores, Inc.* (1940) 111 F. (2d) 287, 290,

the Court has held:

"A landlord is entitled to insist that his lease be either rejected or fully assumed, under the plan."

Bankruptcy courts are without power to discharge future debts.

Zavelo v. Reeves, 227 U. S. 625.

Most of the bonds owned by appellants still have many years to run. None of the bonds are callable at any price, prior to maturity.

In *Happy Valley Water Co. v. Thornton,* 34 Pac. (2d) 991, the dissolution of a bonded California Irrigation District is discussed and the Court refers to the bonds as a debt of the **landholders** rather than as a debt of the Irrigation District. The District was merely an instrumentality of the State.

In

Provident Land Corp v. Zumwalt (1938) 12 Cal. (2d) 365, 376,

the court held that in cases where taxes produced insufficient money to meet the requirements of the district, the full rental value of land, present and future, if necessary, is one of the assets of the "Public Trust", created by the Legislature under this law, for the "uses and purposes of the Act".

ARE THE RIGHTS OF THE STATE TO THE RENTAL VALUE OF LAND, PLEDGED AS SECURITY FOR MONEY BORROWED BY ITS AGENCY ANY MORE SUBJECT TO CONTROL BY A COURT OF BANKRUPTCY THAN RENT PROMISED TO A PRIVATE LANDLORD? DO OUR COURTS UPHOLD

THE DOCTRINE THAT IT IS ILLEGAL FOR A BANKRUPTCY COURT TO REQUIRE THAT A PRIVATE LANDLORD CONTINUE A LEASE IN EFFECT BUT AT A RENT LESS THAN THAT STIPULATED IN THE CONTRACT, BUT LEGAL FOR SUCH A COURT TO COMPEL HOLDERS OF THESE BONDS OF A POLITICAL SUBDIVISION OF THIS STATE TO SURRENDER ALL OR A PART OF THEIR RIGHT TO THE USUFRUCT OR RENTAL VALUE OF LANDS OF SUCH DISTRICT IN REPUDIATION OR VIOLATION OF THE DISTRICT'S IRREVOCABLE CONTRACT WITH THEM TO CONTINUE TO COLLECT SUCH GROUND RENTS UNTIL ALL BONDS HAVE BEEN FULLY PAID?

In more than one California Irrigation District, the irrigation district law, when permitted to operate as enacted by the State, has eliminated all former mortgages and other private liens through foreclosure of tax liens, yet the districts, as such, have in no instance "collapsed". The orderly operation of this law has, in such instances, worked to free the land from impossible private debts and obligations, and to make it accessible to home, farm and orchard seekers, who are now enabled to rent or buy the land direct from the Irrigation District, on terms no more onerous at the worst than were formerly demanded as rent when the land was held under private ownership. If any land in the district is without a rental value, present or future, no scale-down of the district debt will create a rental value for that or any other land in the district. **THIS RENTAL VALUE OF THE LAND**

(which the California Supreme Court in *Provident Land Corp. v. Zumwalt* (12 Cal. (2d) 365) decreed to be the real and ultimate revenue source which the Legislature of California has pledged as a "Public Trust" to its agent, the Irrigation District, for its necessary operation and maintenance expenses and payment of lawfully incurred public indebtedness) **CANNOT LESSEN THE REWARD OF INDUSTRY, NO MATTER WHO COLLECTS IT, NOR ADD TO OR DECREASE CROP PRICES, NOR IN ANY WAY TAKE FROM THE INDIVIDUAL, AS USER, WHAT BELONGS TO THE INDIVIDUAL WHO HAS PAID LAWFULLY DUE TAXES, WHETHER PAID AS TAXES OR AS RENT TO THE DISTRICT AS A STATE AGENCY OR TO A PRIVATE LANDLORD.**

In the Constitution of California, Art. XVII, Sec. 2, is found:

> "The holding of large tracts of land, uncultivated and unimproved by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property."
>
> *Fulton v. Brannan,* 88 Cal. 454.

The Governor's Commission on Re-employment, after careful studies, made its report September 30, 1939. In Chapter VII is the following:

> "Settlement and resettlement programs are largely dependent upon the availability of low cost lands, as well as the economical utilization of tax-delinquent property which has been deeded or

sold to the State. * * * The situation with regard to tax delinquent property is particularly in need of study and clarification. * * * No accurate figures are available but certain studies have revealed that at least 2,000,000 acres of rural land and 40,000 acres in subdivided urban lots are held by the State under tax deeds. Rural tax delinquency reached a peak in 1932 when more than 8,500,000 acres, 17% of California's farm land, were burdened with unpaid taxes. * * * A conspicuous feature of agriculture in California is large scale ownership and operation of farm land. **The most casual survey reveals that thousands of families with farm experience are unable to buy or rent land.** At the same time, large scale farming is more prevalent in California than in any other State. * * * All the problems centering in the **ownership** and **use** of land are so vital to the larger aspects of the employment and living conditions of our citizens that a **thorough overhauling of our land policies**, including records, **taxes, delinquency laws**, penalties and ownership should be made."

The California State Planning Board in its 1938 report entitled "Tax Delinquent Land in California" vigorously recommended that, tillable tax forfeited and tax foreclosed land "be made available for resettling homeless 'dust bowl' and other families now in California".

As for the "rental value of land" within a California Irrigation District, it matters not at all whether that value, present or future, be much or little. **Whatever** it is, or may become, it is the exclusive property of the Irrigation District, (Provident Land Corp. v.

Zumwalt (supra)) and is in effect **dedicated** as part of the "Public Trust" **to any degree or extent** necessary to meet costs of operation and debts of the district. If the land has no rental value, the bonds will never be paid and no bondholder would be allowed to sue the State, which endorsed the bonds, without its consent. Under these decisions, no user of land can be compelled to pay more than the actual economic rent, i. e., no more than he would have to pay a private landlord for similar land. Whether such rent is paid to a private landlord or to a state agency matters not to a user of land. It is only as private interests are enabled to appropriate the ground rent which they believe they can charge users of the land, that land acquires a so-called "market value". The only effect of denying the petition of the district for relief under Chapter IX will be to keep land prices from rising as high as they otherwise would. California Irrigation Districts have better rights to the rent from their land than any private interest, and the "disaster" from failure to scale down all the bonds would be primarily to private interests, who will be otherwise enabled to collect more land rent for themselves, after taxes. Courts of equity usually accord public contracts even stronger protection than private contracts.

> Excerpt from letter of Lincoln to his law partner Gridley.
>
> "The land, the earth that God gave to man for his home, sustenance and support, should never be in the possession of any man, corporation, society, or unfriendly government, any more than air or

water, if as much. An individual, or company, or enterprise requiring land should hold no more than is required for their home and sustenance, and never more than they have in actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly. All that is not so used should be held for the free use of every family to make homesteads, and to hold them as long as they are so occupied."

"A reform like this will be worked out sometime in the future. The idle talk of foolish men, that is so common now, on 'Abolitionists, agitators, and disturbers of the peace', will find its way against it, with whatever force it may possess, and as strongly promoted and carried on as it can be by land monopolists, grasping landlords, and the titled and untitled senseless enemies of mankind everywhere."

"Abraham Lincoln. The men of his time." Vol. II, pages 89, 90, by Robert H. Browne, Blakely-Oswald Printing Co., Chicago.

"Both ground rents and the ordinary rent of land are a species of revenue which the owner, in many cases, enjoys without any care or attention of his own. Though a part of this revenue should be taken from him in order to defray the expenses of the State, no discouragement will thereby be given to any sort of industry. The annual produce of the land and labor of the society, the real wealth and revenue of the great body of the people, might be the same after such a tax as before. Ground rents and the ordinary rent of land are, therefore, perhaps the species

of revenue which can best bear to have a peculiar tax imposed upon them.

"Ground rents seem, in this respect, a more proper subject of peculiar taxation than even the ordinary rent of land. The ordinary rent of land is, in many cases, owing partly at least to the attention and good management of the landlord. A very heavy tax might discourage too much this good attention and management. Ground rents, so far as they exceed the ordinary rent of land, are altogether owing to the good government of the sovereign, which by the protecting industry either of the whole people or the inhabitants of some particular place, enables them to pay so much more than its real value for the ground which they build their houses upon; or make to its owner so much more than compensation for the loss which he might sustain by this use of it. Nothing can be more reasonable than that a fund which owes its existence to the good government of the State should be taxed peculiarly, or should contribute something more than the greater part of other funds toward the support of the government."

Adam Smith, "Wealth of Nations," Book V, Chap. 2, Part 2, Art. 7.

"Meanwhile, we shall do well to recollect, that there are others besides the landed class to be considered. **In our tender regard for the vested interests of the few, let us not forget that the rights of the many** are in abeyance, and must remain so, as long as the earth is monopolized by individuals. Let us remember, too, that the injustice thus inflicted on the mass of mankind, is an injustice of

the gravest nature. **The fact that it is not so regarded, proves nothing.** In early stages of civilization even homicide is thought lightly of. * * * It was once also universally supposed that slavery was a natural and quite legitimate institution—a condition into which some were born, and to which they ought to submit as to a Divine ordination; nay, indeed, a great proportion of mankind hold this opinion still. * * * We find that if pushed to its ultimate consequences, a claim to exclusive possession of the soil involves **a landowning despotism.** We further find that **such a claim is constantly denied by the enactments of our legislature.** And we find lastly, that the theory of coheirship of all men to the soil is **consistent with the highest civilization**; and that, **however difficult** it may be to embody that theory in fact, **Equity sternly commands it to be done.**" (Emphasis ours.)

"Social Statics" (1851 Ed.), by Herbert Spencer, Chapter IX.

"A tax on rent falls wholly on the landlord. There are no means by which he can shift the burden upon anyone else. It does not affect the value or price of agricultural produce, for this is determined by the cost of production in the most unfavorable circumstances, and in those circumstances, as we have so often demonstrated, no rent is paid. A tax on rent, therefore, has no effect other than its obvious one. It merely takes so much from the landlord and transfers it to the state."

John Stuart Mill: *Principles of Political Economy,* Book 5, Chapter III, Sec. 2.

Abandonment of the doctrine of immunity, last reaffirmed in *Brush v. Commissioner,* 300 U. S. 352, must inevitably open the way for unlimited control by the Federal Government of the States and their local governments, for out of bankruptcy springs the mechanism of total domination by Congress of the States.

The real test of whether approval of this petition is "fair and equitable", not only to appellants, but the common good, might be decided by determining, "Will it promote opportunity for homes and employment? Will it make access to land easier? Will it make irrigated land cheaper?"

We submit in the light of the foregoing and the more recent decisions of the California State Supreme Court that the proceedings inaugurated by the District under Chapter IX, violate the provisions of Sec. 83, Par. "I" which reads as follows:

> "Nothing contained in this chapter shall be construed to limit or impair the power of the state to control by legislation or otherwise, any municipality or any political subdivision of or in such state in the exercise of its political or governmental powers including expenditures therefor."

And we submit further that the decree and order of the District Court interferes with the governmental and political powers of the petitioner as well as the property and revenues of the petitioner necessary for essential government purposes. (Sec. 83, concluding paragraph sub-section "c".)

Without repetition here of points and authorities submitted by other appellants in their several petitions for a rehearing in this and the related cases, we adopt such points and authorities as additional grounds in support of this petition and respectfully request a rehearing of this case.

Dated, San Francisco,
October 4, 1940.

Respectfully submitted,
PETER TUM SUDEN,
Attorney for Appellant and Petitioner,
Minnie Rigby, et al.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner, Minnie Rigby, et al., in the above-entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco,
October 4, 1940.

PETER TUM SUDEN,
Counsel for Appellant and Petitioner,
Minnie Rigby, et al.